IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 383 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMSING DHANJI DAMORE

Versus

STATE OF GUJARAT

Appearance:

Mr. P.M.Vyas, Advocate for the appellant.
Mr. M.A.Bukhari,A.P.P. for the respondent.

Coram : J.M.Panchal & M.H.Kadri,JJ.
(August 20,1996)

ORAL JUDGMENT : (Per : Panchal,J.) :-

By means of filing this appeal under section 374 of the Code of Criminal Procedure, 1973, the appellant has challenged judgment and order dated February 4,1988, rendered by the learned Additional Sessions Judge,

Panchmahals, Godhra, in Sessions Case no.111/87, convicting him under sections 302, 201 & 436 of the Indian Penal Code and sentencing him to R.I. for life. It may be mentioned that no separate sentence is awarded to the appellant for offences punishable under sections 201 & 436 of the Indian Penal Code.

2. The prosecution case is that the appellant at the relevant time was residing at village Anika, Taluka Jhalod, District : Panchmahals together with his wife, parents and other family members. The name of his wife was Jayanta. He had married Bai Jayanta four years prior to the date of incident, which took place on June 14,1987 at about 5.00 p.m. After marriage, the appellant was doing miscellaneous work. However, before two years of the date of incident, he was recruited as a Constable in Central Reserve Police Force and was posted at Punjab. Six days prior to the date of incident the appellant had returned to his village Anika after taking leave for 60 days. At that time his wife was pregnant by six months. On June 15,1987 at about 5.10 a.m. the appellant went to Jhalod Police Station and declared that his wife Jayanta died because of fire, which took place in his house accidently. The information given by the appellant was taken down by Jamadar Pratapsinh Mafatsinh, who was incharge of Jhalod Police Station and it was numbered as 7/87 A.D. Jayanta was aged only 22 years and the accidental death reported by the appellant was required to be verified by higher officer. Under the circumstances, the Jamadar conveyed necessary information to Rejeshkumar Chunilal Pathak, who was then Police Sub Inspector, Jhalod Police Station. On receiving information, P.S.I. Mr.Pathak investigated into the accidental death of Bai Jayanta which was reported by the appellant. While conducting investigation, P.S.I. Mr. Pathak in presence of a lady witness, held inquest on the dead body of deceased Jayanta. The investigating officer on inspection of place of incident suspected something foul. Though the appellant had declared at the police station that his wife had died because of burn injuries received while cooking loaves, the investigating officer did not notice extensive fire having taken place in the house. On the contrary, he found that dead body was lying at a distance of 7 feet from the hearth and near the threshold and neither hands nor fingers of the deceased were found to have been smeared with flour. Inspection of the place of occurrence indicated that an appearance was made about accidental fire, but the logs of fire wood placed at the hearth had no marks of fire nor there was smoke on the walls. Even dry grass lying nearby the dead body was found to have been half burnt.

The investigating officer prepared panchnama of the scene of offence in presence of independent witnesses and sent the dead body through Police Constable Premsinh to Jhalod Cottage Hospital for the purpose of autopsy. In view of suspicious circumstances, which were noted by the investigating officer, he made a report in writing that postmortem should be carried out by a panel of two doctors. The investigating officer thereafter recorded statements of Makaliben, mother-in-law of the deceased as well as Dhanjibhai Dhulabhai, father-in-law of the deceased. The statements of relatives of the deceased were also recorded which indicated that a day prior to the incident the deceased had come to village Sarori and complained that she was being beaten by the appellant, as the appellant suspected her fidelity. The postmortem report mentioned that the deceased had died due to asphixia resulting from throttling. Therefore, the investigating officer lodged first information report with P.S.O. Jhalod Police Station. The complaint lodged by P.S.I. Mr. Pathak was entered in the necessary register maintained at the police station. P.S.I. Mr. Pathak thereafter recorded statements of other witnesses He also made search of the appellant,but the appellant was not available. The appellant surrendered at police station on June 16,1987 at 6.45 p.m. and, therefore, investigating officer prepared arrest panchnama in presence of panch witnesses. While preparing arrest panchnama, it was noticed that the appellant had received burn injuries on right hand. Therefore, the appellant was sent to Jhalod Cottage Hospital for treatment with a yadi.The invetstigating officer also got prepared map of scene of offence through Talati of the village. At the conclusion of the investigation, it was revealed that the appellant had killed his wife who was pregnant by six months, as he suspected her fidelity and caused disappearance of the evidence of offence by setting house on fire. The investigating officer, therefore, chargesheeted the appellant under sections 302, 201, 436, 316 of the Indian Penal Code in the Court of learned Magistrate. As the offence under section 302 of I.P.C. is exclusively triable by the Court of Sessions, the case was committed to Sessions Court for trial.

3. The learned Additional Sessions Judge framed charge at Exh.2 against the appellant under sections 302,201, 436, 316 of I.P.C. The charge was read over and explained to the appellant. The appellant did not plead guilty to the charge and claimed to be tried. The prosecution, therefore, examined following witnesses to prove its case against the appellant :-

(1) Dr.R.P.Arora, Medical Officer, Jhalod,PW.1 Ex.9
(2) Dhanjibhai Dhulabhai, PW.2, Ex.12.
(3) Ditabhai Malabhai, PW.3, Ex.13.
(4) Shakarabhai B.Dindor, PW.4 ex.14.
(5) Rupsingbhai Hirabhai, PW.5, exh.17.
(6) Premsing Rangji PW.6, exh.18
(7) Veldiben Laxmanbhai, PW.7, exh.19
(8) Lalsinh Gulabsinh, Medical Officer,Jhalod, PW.8, ex.20.
(9) Dalsukhbhai Saburbhai, PW.9, ex.24
(10) Zalabhai R. Rathod, PW.10, ex.25
(11) Champaklal Nathabhai Rathod, PW.11, ex.26
(12) Pratapsinh Makansinh, PW.12, ex.27
(13) Sayababhai Jitabhai, PW.13, ex.29
(14) Rajeshkumar C.Pathak, PW.14, exh.30.

The prosecution also relied on documentary evidence such as information given by the appellant at exh.28, panchnama of scene of offence, postmortem notes, complaint lodged by P.S.I. Mr. Pathak etc. to prove its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judged questioned the appellant generally on the case and recorded his statement under section 313 of the Code of Criminal Procedure,1973. In his statement under section 313 of the Code the appellant stated that case of the prosecution against him was false. However, the appellant did not lead any evidence in defence.

5. After appreciating the evidence led by the prosecution and hearing the parties,the learned Judge recorded following conclusions :-

(1) The direct evidence does not prove case of the prosecution, but prosecution has also relied on circumstantial evidence to bring home charge against the accused.
(2) At the relevant time the accused was serving in Central Reserve Police Force at Punjab and had come back to his house situated at village Anika 4 or 5 days prior to the date of occurrence.
(3) The accused had taken his wife to village Sanjeli before the incident.
(4) The prosecution has proved beyond reasonable doubt that at the time of incident, the deceased Jayanta was pregnant and had foetus of 24 weeks old.
(5) The prosecution has proved beyond shadow of doubt that on previous day of the incident deceased

Jayanta had gone to her father's place and informed her mother Veladiben that the accused was ill-treating and beating her, as he was suspecting her fidelity due to pregnancy which was 24 weeks old.

(6) The medical evidence on record indicates that deceased Jayanta died due to asphixia resulting from throttling.

(7) The accused had a scar of burning on his right hand.

(8) The accused had gone to the police station and had given misleading information about the accidental death of his wife by fire.

(9) The medical evidence proves it beyond doubt that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death.

(10) The evidence led by the prosecution shows beyond doubt that dead body of the deceased was not lying near hearth and there was no fire in the hearth, but unburnt logs of wood as well as dry grass were lying near the dead body.

(11) The prosecution has proved that on the date of the incident the accused with an intention of causing death of his wife Jayanta throttled her neck and thereby caused her death and with a view to causing disappearance of evidence of offence, set the house of his father on fire by putting grass on the dead body.

(12) The evidence of investigating officer indicates that after giving false information at the police station, the accused was not available at his house and surrendered before police on June 16, 1987.

6. After recording the above referred to conclusions, the learned Judge held that the circumstances proved by the prosecution are consistent only with the guilt of the accused and inconsistent with any hypothesis of innocence of the accused. The learned Judge, however, held that the evidence did not indicate that the accused caused death of quick born child because the pregnancy was 24 weeks old. The learned Judge, therefore, acquitted the accused of the offence under section 316 of I.P.C., but convicted him under sections 302, 201, 436 of I.P.C. and imposed sentence referred to earlier, giving rise to the present appeal.

7. Mr. P.M.Vyas, learned Counsel appearing for the appellant has taken us through the entire evidence on

record. It was pleaded that the facts established by the prosecution are not consistent with the hypothesis of guilt, but are consistent with innocence of the appellant and, therefore, the appeal deserves to be accepted. It was argued on behalf of the appellant that the information declared by the appellant at the police station on June 15,1987 was not false, but true which indicated that the deceased died because of burn injuries. The learned Counsel for the appellant emphasised that motive is not proved by the prosecution and, therefore, benefit of doubt should be given to the appellant. While challenging conviction of the appellant under section 436 of I.P.C. it was argued that prosecution has failed to prove that damage had been caused to the house of the father of the appellant and, therefore, conviction of the appellant under section 436 of I.P.C. deserves to be set aside. It was asserted that the appellant had not caused disappearance of any evidence pertaining to the offence and, therefore, conviction under section 201 also deserves to be set aside. The learned Counsel pleaded that as the prosecution has failed to fully prove the circumstances from which conclusion of guilt is drawn, the appeal deserves to be allowed.

8. Mr. M.A.Bukhari, learned A.P.P. appearing for the respondent submitted that not only the circumstances from which the conclusions are drawn , are fully proved, but the facts so established are consistent only with the hypothesis of guilt and inconsistent with the innocence of the appellant and, therefore, the appeal deserves to be dismissed. It was argued on behalf of the respondent that the motive for commission of crime was that appellant was suspecting fidelity of his wife and this motive is fully proved by the prosecution from the evidence of father, mother and brother of the deceased. It was emphasised that damage to the property of the father of the appellant is proved by the evidence of panch witness and contents of panchnama and, therefore, conviction of the appellant under section 436 of I.P.C. should be upheld by the Court. The learned Counsel for the State Government contended that after throttling his wife to death, the appellant had given false information at the police station to mislead all and had set grass lying near the dead body on fire with a view to causing disappearance of evidence of offence. Mr. Bukhari, learned A.P.P. therefore, asserted that conviction of the appellant under sections 302 and 201 of I.P.C. is perfectly justified and does not warrant any interference by the Court in the present appeal.

9. The prosecution sought to rely on the direct evidence of Dhanjibhai Dhulabhai, PW.2 Exh.12 to prove the charge against the appellant. However, he being father of the appellant, did not support the prosecution case. In his examination-in-chief the witness stated that on the date of incident the appellant in company of his wife had gone to village Sanjeli and returned at about 4.00 p.m. He deposed that wife of the appellant was cooking loaves and at that time he was at his well. He testified before the Court that he saw flames of fire coming out of the house and, therefore, went to the house and raised shouts. The witness stated before the Court that his daughter-in-law died because of burn injuries. As the witness did not support the prosecution case, the prosecution sought permission of the Court to treat him as hostile withess. Permission as prayed for was granted to the prosecution and the witness was permitted to be cross-examined by the prosecution. During cross-examination he was contradicted with his police statement. However, he maintained that his police statement was obtained under force and coercion. In para-5 of his deposition, the witness stated that when he went to the house, the door was found closed and when he peeped into the room through the door, he learnt that his daughter-in-law was not trying to save herself from the fire because she was dead. As noted earlier, this witness has not supported the prosecution in main. He was treated as a hostile witness. The law regarding evidence of a hostile witness is well settled. Normally, evidence of a hostile witness cannot be relied on by the prosecution unless it is corroborated in material particulars by reliable independent evidence. It means that part of the evidence which is supported by reliable independent evidence can be acted upon. The evidence of this witness is not corroborated at all by any independent and reliable evidence on record when he stated before the Court that deceased Jayanta died because of burn injuries. The other part of his evidence which is corroborated by reliable evidence on record shall be referred to hereinafter.

Witness Dhanjibhai Dhulabhai asserted in his testimony before the Court that his daughter-in-law died because of burn injuries. In the information which was conveyed by the appellant in the morning of June 15,1987 the appellant had diclosed that his wife had died due to burn injuries. Therefore, it becomes relevant to ascertain whether the deceased had died a homicidal death or an accidental death. The evidence of Dr. Rajendra Arora, who was then medical officer, Jhalod Government Dispensary, shows that he had carried out postmortem on

dead body of Jayanta jointly with Dr.Lalsinh Gulabsinh, who was also discharging duties as one of the medical officers at Jhalod Cottage Hospital. Witness Rajendrakumar Arora has stated in detail about the external injuries which were found on the body of the deceased. Internal injuries are also mentioned by him elaborately in his evidence. The external and internal injuries are also noted in postmortem notes which are signed by witness Rajendrakumar as well as Lalsinh Gulabsinh. The cause of death as stated by the medical officers and mentioned in the postmortem notes was asphixia due to throttling. It means that the deceased did not die due to burn injuries, but was throttled to death. Though both the medical officers have been searchingly cross-examined, nothing has been brought on record to discredit their version, In view of clinching medical evidence, there is no manner of doubt that deceased Jayanta died a homicidal death and not accidental death as claimed by the appellant in his first version which is to be found in exh.28 or as stated by witness Dhanjibhai Dhulalbhai, who is father of the appellant.

10. As the prosecution could not prove the case against the appellant by direct evidence, the prosecution has also relied on circumstantial evidence appearing against the appellant for bringing home the charge levelled against him. However, before referring to circumstantial evidence led by the prosecution, it would be advantageous to refer to law of circumstantial evidence. The law of circumstantial evidence is well settled by catena of decisions of the Supreme Court. The circumstantial evidence means combination of facts creating a net without there being any tear through which the accused can escape. The circumstantial evidence is just like a rope made of many strands to stay together. The rope has strength more than sufficient to bear the stress laid upon it though no one of the filaments of which it is composed would be sufficient for that purpose. Circumstantial evidence is evidence of relevant facts from which one can by a process of intuitive reasoning infer about the existence of facts in issue. Essential ingredients to prove guilt of an accused by circumstantial evidence are- (i) the circumtances from which the conclusion is drawn, should be fully proved, (ii) the circumstances should be conclusive in nature, (iii) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence of accused, and (iv) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than an accused. It is also well

settled that in case of circumstantial evidence totality and cumulative effect of various incriminating circumstances have to be taken into consideration while judging guilt or innocence of the accused.

11. Having regard to the above-quoted principles of law, it has to be ascertained as to whether the prosecution has succeeded in bringing home guilt to the appellant. The first circumstance on which the prosecution proposes to rely is that at the relevant time the appellant was serving in Central Reserve Police Force at Punjab and had come back to his house situated at village Anika some few days prior to the date of the incident. In order to prove this fact, the prosecution has relied on the evidence of witness Zalabhai R.Rathod, PW.10,Exh.25. He is father of the deceased. He has stated in his evidence that prior to the date of incident, the appellant had come to his house situated at village Anika from Punjab on leave. This fact is also stated by the appellant in the information exh.28 which he had given on June 15,1987 regarding accidental death of his wife. Even the hostile witness has stated before the Court that 5 days prior to the date of incident, the appellant, who is his son, had returned to village Anika from Punjab. As this evidence of hostile witness is corroborated by other reliable evidence,it can be acted upon. The circumstance that on the date of incident, the appellant was in village Anika is fully proved by the prosecution and the finding recorded by the learned Judge to the effect that on the date of incident, the appellant was at his house situated in village Anika, is hereby confirmed.

12. The next circumstance on which the prosecution has relied on is that deceased Jayanta was having pregnancy which was 24 weeks old. The fact that deceased Jayanta was pregnant at the time when the incident took place,is stated by Veldiben Laxman, PW.7, Exh.19 as well as Zalabhai R.Rathod, PW.10, Exh.25 and Champaklal N.Rathod, PW.11, Exh.26. The say of these witnesses that deceased Jayanta was pregnant at the time when the incident took place is not seriously challenged by the defence. Dr. Rajendra Arora as well as Dr. Lalsinh Gulabsinh, who had jointly performed postmortem on the dead body of deceased Jayanta have also deposed before the Court that the deceased was pregnant and her pregnancy was 24 weeks old. This fact is also stated in the postmortem notes signed by two doctors. Under the circumstances, we hold that prosecution has proved beyond reasonable doubt the fact that at the time when the incident took place, the deceased was pregnant and

pregnancy was 24 weeks old.

13. The another circumstance, which is sought to be relied on by the prosecution,is motive which prompted the appellant to commit offences in question. According to the prosecution, the appellant was suspecting fidelity of his wife and, therefore, the appellant killed her.

Veldiben Laxmanbhai, PW.7, Exh.19 in her sworn testimoney has stated that the appellant was beating her daughter before the incident. She has further elaborated that a day prior to the date of incident her daughter had come to village Sarori and informed her that she was beaten by the appellant, as the appellant had suspicion that she had not conceived through him. She has further claimed that on learning this from her daughter she had advised her daughter not to go to her in-laws' house. However, according to this witness, son of her daughter named Arat was at village Anika and her daugher assured her to return next day after bringing Arat. Though this witness is effectively cross-examined on behalf of the appellant, nothing has been brought on record to shake her version to the effect that her deceased daughter was subjected to cruelty, as the appellant suspected her fidelity. The witness has deposed in most straight forward manner before the Court. The evidence of this witness proves it conclusively that the appellant had lurking suspicion about fidelity of his wife.

14. Similarly, Zalabhai R.Rathod, who is father of deceased Jayanta,has stated in his sworn testimony before Court that a day prior to the date of the incident his daughter had come to village Sarori and narrated before his wife i.e. mother of the deceased that the appellant was suspecting that she had not conceived through him and was beating her. The witness has deposed that thereupon his wife had asked the deceased not to go to the house of her in-laws', but the deceased had mentioned that after bringing her son,who was at village Anika, she would come back to village Sarori. He has clearly stated that at the time when the deceased Jayanta had talk with his wife he was not present in the house, but he was subsequently informed by his wife. In cross-examination the witness has denied the suggestion that the deceased had not come to village Sarori a day prior to the date of the incident. In our view, the witness has given deposition in most simple and natural manner. No major contradictions have been pointed out in his evidence. It is not demonstrated before the Court that he has improved his version and stated something which was not stated by him in his police statement. It is but natural that his

wife would inform him about the talk she had with her daughter. Under the circumstances, we are of the opinion that the learned Trial Judge did not commit any error in placing reliance on the deposition of this witness for the purpose of coming to the conclusion that motive which prompted the appellant to commit crime in question is also proved by this witness.

The prosecution has yet relied on the evidence of another witness Champaklal N.Rathod to prove the motive. This witness asserted before the Court that at the time when the deceased narrated to her mother that the appellant was beating her because he suspected her fidelity, he was present. However, his evidence indicates that he did not mention in his police statement that he was present at the time when cruelty meted out to the deceased was being narrated by the deceased to her mother. The learned Judge, who had advantage of observing demeanour of the witness, has not placed reliance on the evidence of this witness while deciding the question whether prosecution has proved motive or not. In our view, having regard to the discrepancy appearing in the evidence of this witness, it would not be safe to rely on his deposition while deciding the question of motive. However, motive is fully proved by the evidence of Veldiben Laxman, PW.7, Exh.19 and Zalabhai R.Rathod. It is well settled that in a case based on circumstantial evidence,the existence of motive assumes significance though the absence of motive does not necessarily discredit the prosecution case, if the case stands otherwise established by other conclusive circumstances and the chain of circumstantial evidence is so complete and is consistent only with the hypothesis of the guilt of the accused and inconsistent with the hypothesis of his innocence. The evidence on record has clearly and cogently established the motive which was the cause of the incident.

15. The next circumstance which is relied on by the prosecution to prove the charge against the appellant is that the appellant was last seen together in company of the deceased. The appellant in his earliest version Ex.28 mentioned that on the date of incident he in the company of his wife and son had gone to village Sanjeli for their treatment and returned to village Anika at about 3.30 p.m. The father of the appellant has clearly stated in his evidence that on the day of incident the appellant in the company of his deceased wife had gone to village Sanjeli in the morning and had returned to village Anika by about 4.00 p.m. He has also stated that

wife of the appellant was cooking loaves. As this version of the hostile witness is fully corroborated by admission of the appellant in Ex.28, it can be relied on. At the time when the appellant surrendered to police on June 16,1987, panchnama of the person of the appellant was prepared by the investigating officer in presence of independent witnesses. Witness Shakarabhai Bhurabhai Dindor, PW.4, Exh.15 has stated in his evidence that on June 16,1987 he was summoned as a panch witness at Jhalod Police Station and at that time another panch Dhanabhai was also present. The witness has deposed that at that time the appellant was present at the Police Station and panchnama of his person was prepared in his presence as well as in presence of another panch witness. The panchnama of the person of the appellant is produced by him at Exh.16. A bare look at exh.16 clearly indicates that the appellant had burn injuries on his right hand. The evidence of investigating officer Mr. Pathak shows it beyond doubt that as burn injuries were found on the right hand of the appellant, he was referred to Hospital for treatment with a Yadi. The yadi sent by investigating officer to medical officer, Cottage Hospital, Jhalod is produced by the prosecution at exh.22. Exh.23 is the certificate of injury sustained by the appellant. The injury certificate reads as under :-

"This is to certify that Ramsing Dhanajibhai brought by police constable with p.yadi on dated 16.6.87 at 8.15 p.m. I have examined him and following injury noted.

(1) Blister of burns on Rt.wrist joint medial aspect size 1" regular nature.

Type of injury : simple

Injury caused by : Burns.

Duration of recovery period : seven to ten days if no any complication occurs."

16. In the information which was conveyed by the appellant in the early hours of June 15,1987 at Jhalod Police Station it was mentioned by him that at the time when the fire took place,other family members were not in the house. In the said information it was claimed by the appellant that at the time when he went to the house, the deceased was burning, but it was not possible to save her because of flames emitting from the fire. The fact that the appellant had received burn injuries is not disputed at all. This proves beyond reasonable doubt that at the time when the incident took place the appellant was in the company of the deceased and had all opportunity of committing crime in question. In our view, the prosecution has proved beyond shadow of doubt that the

appellant was last in the company of the deceased and had opportunity of committing offence mentioned in the charge Exh.2.

17. The prosecution has also relied on circumstance that fire had not taken place in the house where the deceased was found dead, but an attempt to mislead one and all was made to indicate that fire had taken place in the house and because of fire the deceased died. Witness Ditabhai Malabhai, PW.3, Exh.13 has deposed before the Court that on June 15,1987 police had summoned him at village Anika and in his presence panchnama of place of offence was prepared. From the evidence of Dhanjibhai Dhulabhai, PW.2 it is evident that place of occurrence was shown by him. This is so stated by him in para-6 of his deposition. Witness Ditabhai has stated that dead body of Jayanta was lying near threshold. He has further claimed that some pieces of wooden logs were lying nearby and there were bundles of millet also. He has asserted that to the south there was a hearth which was not in use and there was neither ash nor logs of wood. His evidence also discloses that frying-pan was lying near the hearth and in other vessel there was flour. This witness has testified that the size of the room where the dead body was lying was 18 ft.x 6 ft. He has clearly stated before the Court that unburnt logs of wood as well as unburnt grass lying near the dead body were seized by the police in his presence. Though this witness belongs to village Sarori, which was the village of the deceased, that by itself cannot be a ground to reject his evidence as untrustworthy. The witness is serving as a wireman. There is nothing on the record to indicate that he has any grudge against the appellant. His evidence is not only fully corroborated by the contents of panchnama of place of occurrence Exh.14, but also by evidence of Zalabhai Rajiyabhai Rathod, PW.10, Exh.25, who is father of the deceased, Champaklal Nathabhai Rathod, PW.11, Exh.26, who is cousion of the deceased and the Investigating Officer. The evidence of this witness read with contents of panchnama of place of occurrence prove it beyond pale of doubt that there was no extensive damage caused to the house because of fire and even unburnt grass as well as unburnt logs of wood were seized there-from. It necessarily means that after killing the deceased, an attempt was made by the appellant to set certain articles lying in the room on fire to indicate that the deceased had died because of burn injuries and in that process he himself had also received burn injuries on his right hand.

18. In a case of circumstantial evidence, conduct of

the accused becomes relevant though it has a limited use. The evidence led by the prosecution proves it beyond shadow of doubt that the appellant did not inform the police for a pretty long time though the incident had taken place on June 14,1987 at about 5.00 p.m. and gave wrong and twisted version in the early hours of June 15,1987. In his version before the police, the appellant narrated that his wife died because of burn injuries. As discussed above, prosecution has led clinching evidence to indicate that the deceased died because of throttling of neck and not due to burn injuries which totally falsifies the claim of the appellant that the deceased had died due to burn injuries. This is clearly an attempt to mislead the investigation. But for the vigilence shown by P.S.I. Mr. Pathak, probably crime would not have seen the light of the day. The evidence of the investigating officer Mr.Pathak shows that he had made search about the appellant at village Jhalod, village Anika and village Sanjeli, but the appellant had made himself scarce and was not available. Because of some information received the investigating officer had arranged even night halt at village Sanjeli to apprehend the appellant On June 16,1987, the investigating officer recorded statements of witnesses conversant with the case. However, the appellant surrendered at Jhalod Police Station on June 16,1987 at about 18.45 hours. The strange conduct of the appellant of making himself scarce after giving false information in the early morning of June 15,1987, also deserves to be noted.

19. The net result of the above discussion is that the prosecution has fully established by unimpeachable evidence beyond a shadow of doubt the following circumstances from which the inference of guilt of the appellant is to be drawn ;-

(1) At the relevant time the accused was serving in Central Reserve Police Force at Punjab and had come to his house situated at village Anika some five days prior to the date of the incident which took place on June 14,1987.

(2) On the date of incident, he had taken his wife to village Sanjeli in the morning and had returned with her to his village by about 4.00 p.m.

(3) At the time of incident deceased Jayanta was pregnant and pregnancy was 24 weeks old.

(4) On the previous day of the incident deceased Jayanta had gone to her father's place situated at village Sarori and informed PW.7 Veldiben that the appellant was beating her and ill-treating her, as the appellant was suspecting her fidelity.

(5) There is nothing on record to indicate that the appellant was not at his house after 4.00 p.m. on the date of the incident and scar of burning on his right hand shows that he was in the company of the deceased and had opportunity of committing crime in question.

(6) The dead body of the deceased was not lying near the hearth and there was no fire in the hearth. Unburnt logs of wood and unburnt grass were seized from the place of offence manifesting that no extensive fire had taken place in the house. The medical evidence on record proves it beyond pale of doubt that the deceased was throttled to death and she did not die of burn injuries.

(7) Deliberate attempt was made by the appellant to destory evidence of death by setting some articles lying in the room as well as dead body of deceased Jayanta on fire.

(8) Deliberate attempt was made by the appellant to mislead the investigation when he informed the police that his wife had died because of burn injuries in an accidental fire. After giving false information, the accused had made himself scarce till he surrendered at the police station on June 16,1996 at about 6.45 p.m.

These are the circumstances which have been fully established beyond all reasonable doubt by the prosecution by leading cogent and convincing evidence. It is established from the evidence that the deceased and the appellant were living in the room. The circumstance that death took place in the room of the father of the appellant and the attempt to destory the evidence of murder by burning dead body; unnatural conduct of the appellant immediately after the occurrence; false plea of accidental death and absence from the house are material relevant circumstances which would complete the chain of circumstantial evidence leading to only one conclusion that the appellant alone committed ghastly murder of his wife. The chain of circumstances which are fully established by prosecution is complete and does not leave any reasonable ground for a conclusion consistent with innocence of the appellant. Link after link forged firmly by credible testimony has formed a strong chain of sure guilt of the appellant. The chain of circumstances is such as to show that within all human probability the act must have been done by the appellant. The circumstances are of determinative tendency unerringly pointing towards the guilt of the appellant. As noted earlier, the circumstances taken collectively are incapable of explanation of any reasonable hypothesis

save that of the guilt of the appellant. The damage to the house of the father of the appellant is amply proved by the panch witness and panchnama of place of occurrence. On totality of circumstances, we are of the opinion that no exception can be taken to the conviction of the appellant under sections 302, 201 and 436 of the Indian Penal Code. As we do not see any merits in the appeal, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal is directed to be disposed of in terms of direction given by the learned Judge in the impugned judgment.

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